Verizon Communications
1300 I Street NW, Suite 400W
Washington, DC 20005

March 12, 2002

Ex Parte

Mr. William Caton
Acting Secretary
Federal Communications Commission
445 12th St., S.W. – Portals
Washington, DC 20554

RE: Application by Verizon-New Jersey Inc. for Authorization To Provide In-Region, InterLATA Services in State of New Jersey, Docket No. 01-347 - **REDACTED**

Dear Mr. Caton:

This responds to AT&T's ex parte submission regarding two issues in New Jersey: the ability of competitors to earn a gross profit margin, and the benefits that consumers will receive from Verizon's entry into the long distance market.[1]

A. Profit-Margin Analysis.

AT&T argues that the rates for a UNE platform in New Jersey do not allow competitors to earn an adequate gross profit margin. This claim fails as both a legal and a factual matter. First, as Verizon has demonstrated, the Commission is under no legal obligation to perform a profit-margin analysis here. The D.C. Circuit has upheld the Commission's determination that such an analysis is irrelevant for purposes of determining whether rates comply with the checklist, and the court's decision in no way requires such an analysis for purposes of determining whether granting Verizon's Application is in the public interest. Second, the facts show that the New Jersey rates permit competitors to earn a substantial gross profit. AT&T's claims to the contrary are entirely without merit.

1. The Commission is under no legal obligation to perform a profit-margin analysis.

The Commission is under no legal obligation to determine whether the rates for a UNE platform in New Jersey permit competitors to earn a gross profit margin.

First, the Commission has no legal obligation to conduct a profit-margin analysis for the purposes of determining whether Verizon satisfies the requirements of the checklist. The Commission has repeatedly held that, in order to satisfy the checklist, "incumbent LECs are not

1 See Ex Parte Letter from Robert W. Quinn, AT&T, to William F. Caton, FCC, CC Docket No. 01-347 (Mar. 1, 2002) ("AT&T Ex Parte Letter").

required, pursuant to the requirements of section 271, to guarantee competitors a certain profit margin."[2] And the D.C. Circuit has explicitly rejected the argument that the Commission must perform such an analysis in the context of determining whether rates satisfy the checklist under section 271(d)(3)(A): "[W]e can hardly find the Commission's rejection of appellants' proposal unreasonable. . . . And it would be reasonable for the Commission to treat any questions raised by the low volumes, or by the appellants' evidence showing the difficulty of making a profit . . ., as subsumed within the issue of TELRIC compliance."[3]

In an attempt to put a new spin on its rejected argument, AT&T relies on section 252(d)(1), which requires Verizon's wholesale rates to be "nondiscriminatory."[4] AT&T claims that this provision is triggered if Verizon's wholesale rates are higher than its retail rates. But the "nondiscrimination" requirement in section 252(d)(1) has nothing to do with the relationship between wholesale and retail rates. As the Commission has held, that provision is instead designed to ensure that incumbent LECs do not charge wholesale rates that discriminate between various wholesale customers.[5]

AT&T nonetheless argues that the Supreme Court's decision in FPC v. Conway Corp., 426 U.S. 271 (1976), somehow supports its reading of the Act. But that case is distinguishable from the situation here. In Conway, the Court held that the Federal Power Commission "ha[d] jurisdiction to consider the allegations of the company's wholesale customers that the proposed wholesale rates, *which are within the Commission's jurisdiction*, are discriminatory and noncompetitive when considered in relation to the company's retail rates, which are not within the jurisdiction of the Commission."[6] Unlike the Federal Power Commission, this Commission does not have jurisdiction over wholesale rates, which are instead established by state commissions. The permissible statutory inquiry under the Communications Act is therefore very different from the inquiry under the Federal Power Act at issue in Conway. And, as the D.C. Circuit has held, for purposes of checklist compliance it is permissible to limit that inquiry to whether the rates established by the state commission comply with TELRIC.[7]

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2 Arkansas/Missouri Order ¶ 65; see also Kansas/Oklahoma Order ¶ 92; Pennsylvania Order ¶ 70.

3 Sprint Communications Co. v. FCC, 274 F.3d 549, 553-54 (D.C. Cir. 2001)

4 AT&T Ex Parte Letter at 7 (citing 47 U.S.C. §§ 252(d)(1), 271(c)(2)(B)(ii)).

5 See Local Competition Order ¶¶ 859-861.

6 Conway, 426 U.S. at 272-273 (emphasis added).

7 Sprint, 274 F.3d at 556; id. at 557 ("[A] challenger can prevail . . . by making one of two showings. First, he may demonstrate that the FCC acted arbitrarily and capriciously in finding that the state commission followed basic TELRIC principles. Alternatively, he may point to specific factual errors made by the state commission, and demonstrate either that the FCC failed to consider these errors or that it arbitrarily determined that the rates were nevertheless within the range acceptable under TELRIC.").

Second, the Commission is under no legal obligation to conduct a profit-margin analysis for the purposes of determining whether Verizon's entry would be in the public interest. Contrary to AT&T's characterization, the D.C. Circuit's decision in Sprint does not obligate the Commission to perform a profit-margin analysis. In Sprint, the court held only that, where the local market is "characterized by relatively low volumes of residential competition," the FCC must *either* "pursue the[] price squeeze claim, *or* at the very least explain why the public interest does not require it to do so."[8] And the court strongly hinted that a full-scale price-squeeze analysis is unnecessary and likely impractical in a section 271 proceeding. For example, it stated that "the potential scale of a serious price squeeze inquiry" may be incompatible with the "90-day limit [that] constrains the scope of the Commission's inquiries."[9] The court also indicated that a price-squeeze analysis may be futile, as "the residential market may not be attractive to competitors even if UNE costs are at the lower end of TELRIC."[10] Moreover, the court's decision did not purport to alter the long-standing rule that "the [FCC's] judgment regarding how the public interest is best served is entitled to substantial judicial deference."[11]

In New Jersey, there is ample legal justification for not conducting any analysis of whether the rates would provide an adequate profit margin. The price-squeeze claim advanced by AT&T relates exclusively to the price of the UNE platform, and the Commission may find that the availability of other entry mechanisms enables AT&T to avoid a price squeeze even if its claims about a price squeeze were true. For example, competitors also may serve customers through resale of Verizon's services, by obtaining stand-alone UNEs from Verizon, by interconnecting their own facilities with those of Verizon, or by some combination of these options. AT&T argues that the Commission should ignore these alternatives, but its claims are unavailing.

AT&T first argues that the Commission should ignore resale as an alternative to the UNE-P, because it claims the resale discount is "wholly insufficient to allow any firm to cover its internal costs of service."[12] As an initial matter, that position is wholly at odds with the Act itself. The resale provisions of the Act guarantee that competing carriers can *always* avoid a price squeeze because the rates for resale must be set at a discount from Verizon's retail rates.[13] And while AT&T claims that this statutorily prescribed discount is not enough, Congress obviously thought otherwise. Thus, it is not only appropriate to view resale as a viable alternative to the UNE-P, but statutorily required.

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8 Id. at 553-54 (emphasis added).

9 Id. at 555-56.

10 Id. at 556.

11 FCC v. WNCN Listeners Guild, 450 U.S. 582, 596 (1981).

12 AT&T Ex Parte Letter at 12.

13 See 47 U.S.C. § 251(c)(4); id. § 252(d)(3) ("a State commission shall determine wholesale rates [for resold services] on the basis of retail rates").

Moreover, in New Jersey, real-world experience bears out the fact that resale *is* a viable alternative to UNE-P. As Verizon demonstrated in its Application, competitors in New Jersey are serving more than 182,000 lines – including approximately 56,000 residential lines – through resale. See Application at 78-79. There are at least 20 competing carriers in New Jersey that provide 1,000 or more resold lines, including eight that provide 1,000 or more residential resold lines.[14] There are 17 competing carriers in New Jersey that provide 500 or more residential resold lines.[15]

AT&T also argues that resale is irrelevant because it "does not give a CLEC access to the 'inputs' required to provide long distance service."[16] That is obviously untrue. CLECs that serve customers through resale are entitled to provide long distance service to those customers, either their own service or that of another provider. Thus, under a price-squeeze inquiry — whether under the antitrust law or section 271's public-interest test — it is impossible to maintain that resale denies competitors an "input" that they could obtain through a UNE platform.

AT&T next claims that the "only facilities-based alternative to UNE-P in New Jersey" is one in which a CLEC leases unbundled loops from Verizon and combines them with the CLEC's own switches.[17] Again, this claim is false, as AT&T's own experience in other states shows. AT&T and other cable operators are currently offering telephony services provided entirely over their own cable networks to more than 10 percent of all homes in the country.[18] And while AT&T claims that the nonrecurring hot-cut rates in New Jersey preclude CLECs from pursuing a strategy in which they lease loops from Verizon and combine them with the CLECs' own switches, Verizon has demonstrated that this claim is based on numerous misrepresentations about the unbundled loop rates in New Jersey.[19]

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14 See Ex Parte Letter from Clint E. Odom, Verizon, to Magalie Roman Salas, FCC, CC Docket No. 01-347 (Jan. 2, 2002).

15 See id.

16 AT&T Ex Parte Letter at 12.

17 Id. at 11.

18 See, e.g., NCTA, Cable Telephony: Offering Consumers Competitive Choice at 2-3 (July 2001). This evidence also puts the lie to AT&T's claim that "entrants cannot rationally invest in switches and provide UNE-L until they have used UNE-P to build up a customer base." AT&T Ex Parte Letter at 11.

19 See Ex Parte Letter from Clint E. Odom, Verizon, to William Caton, FCC, CC Docket No. 01-347 (Mar. 8, 2002).

2. The UNE platform rates in New Jersey permit competitors to earn a substantial gross profit margin.

Although the Commission is under no legal obligation to conduct a profit-margin analysis here, Verizon has demonstrated that the margins available to competitors in New Jersey are substantial.

In its Application, Verizon demonstrated that comparing Verizon's wholesale rates with the revenues from the true average retail customer in New Jersey yields a gross profit margin of approximately ****** percent.[20] Verizon also demonstrated that comparing Verizon's wholesale rates with the revenues from Verizon's "Local Package" in New Jersey – a residential package that includes unlimited local calling, unlimited local directory assistance, three vertical features, and touch tone service – is even higher.[21]

While AT&T argues that profit margin in New Jersey is lower than Verizon has shown, it has not performed a gross margin analysis of its own in this proceeding, nor offered any explanation for its failure to do so. AT&T relies instead on the submissions of WorldCom and Z-Tel on this issue.[22] But Z-Tel also has not performed a profit-margin analysis here.[23] As for WorldCom's analysis, if anything, it confirms that the gross margins available to competitors in New Jersey are significant. On its face, WorldCom's analysis shows that the UNE platform rates in New Jersey provide an average gross margin of more than 30 percent statewide, and that the margin is even higher for nearly 70 percent of the lines in New Jersey.[24] Significantly, even under WorldCom's own analysis, the margins available to competitors in New Jersey are comparable to the margins that WorldCom itself claimed were available in Pennsylvania, which both WorldCom and this Commission found were sufficient to "allow for profitable entry."[25]

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20 See Reply Comments at 47; Garzillo/Prosini Reply Decl. ¶ 33 & Att. 3.

21 See Garzillo/Prosini Reply Decl. Att. 3.

22 See id. at 6 ("WorldCom and Z-Tel have demonstrated that Verizon's UNE-P rates preclude profitable residential entry in New Jersey.").

23 In fact, Z-Tel's own economist concludes only that the retail rates in New Jersey "mak[e] a price squeeze a threat." Z-Tel Ford Aff. ¶ 17; see also id. ¶ 3 ("the prospects for a price squeeze are high."). Z-Tel does not provide any evidence that a price squeeze actually exists today.

24 See WorldCom Huffman Decl. Att. 1.

25 Pennsylvania Order ¶ 71 ("WorldCom has not demonstrated that the rates set by the Pennsylvania Commission do not allow for profitable entry. WorldCom's own submission indicates that the state average rate provides a gross margin of roughly thirty percent for residential lines, and the margin is substantially higher for forty-six percent of the residential lines.").

Moreover, WorldCom's analysis is flawed in key respects. Once these errors are corrected, the margins available to competitors obtaining a platform in New Jersey are considerably higher than WorldCom acknowledges. WorldCom's most obvious error is to ignore the revenue that a competitor would earn from the provision of intraLATA toll service in New Jersey.[26] While WorldCom offers no explanation for this omission, AT&T claims that the omission is justified because competing carriers can already provide intraLATA toll services in New Jersey without competing for other local services as well.[27] But that is not relevant to whether intraLATA toll revenues should be included in a profit-margin analysis.

The relevant inquiry under a profit-margin analysis must instead look – at a minimum – at what revenues a carrier can be expected to earn from the wholesale inputs it obtains. And as AT&T has argued elsewhere, CLECs may provide intraLATA toll service over the UNE platforms they obtain from ILECs.[28] It is therefore appropriate to include the revenues that CLECs would earn from the provision of intraLATA toll service using a UNE platform in any analysis of the gross margin available to competitors that obtain a platform. By the same logic, it is appropriate – as both AT&T and WorldCom have conceded – to include revenue from the provision of access service (for both intraLATA and interLATA toll services) in the analysis here, because these services also may be provided over a UNE platform.[29]

But while it is necessary to include the access service revenues for intraLATA toll service in the analysis, it is not sufficient. Although a CLEC may be able to compete for intraLATA toll service without competing for other kinds of local service, it is far more likely to obtain a customer's intraLATA toll business when it provides that customer other local services as well. Thus, a CLEC that enters the local market will begin earning significant intraLATA toll revenues that it would not otherwise have earned, even if it theoretically could have competed for those revenues beforehand. And the ability to earn those revenues will certainly factor into a CLEC's decision whether to enter the local market in the first place.

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26 As Verizon's own analysis demonstrates, WorldCom also understates the revenues that a CLEC is likely to earn from vertical features and other charges. See Garzillo/Prosini Reply Decl. Att. 3. We discuss the revenues that comprise this "other" category below.

27 AT&T Ex Parte Letter at 20.

28 See, e.g., Testimony of James D. Webber on Behalf of AT&T Communications of Wisconsin, Inc. and TCG Milwaukee at 35, Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Wisconsin Bell Telephone Company d/b/a Ameritech Wisconsin Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 05-MA-120 (Wisc. PSC June 30, 2000) ("Q: Can the shared transport network be used to carry AT&T's intraLATA toll services in cases where AT&T is using the UNE-P? A: Yes.").

29 See, e.g., AT&T Lieberman Decl. ¶ 18, CC Docket No. 01-324 (Rhode Island 271 Proceeding) (FCC filed Dec. 17, 2001); WorldCom Huffman Decl. Att. 1.

AT&T's and WorldCom's analysis ignores these intraLATA toll revenues entirely. By contrast, Verizon's profit-margin analysis includes these revenues, but in a way that properly accounts for the fact that competitors may already be providing intraLATA toll service to customers. Verizon has calculated the intraLATA toll revenue generated by the average customer in New Jersey.[30] This average reflects the fact that Verizon has – as AT&T notes – already lost a great deal of intraLATA toll business to competitors. Customers in New Jersey that receive their intraLATA toll service from a provider other than Verizon do not generate any intraLATA toll revenues, but only intraLATA toll access charge revenues. Customers that do receive intraLATA toll service from Verizon generate intraLATA toll revenues, but not intraLATA toll access charge revenues. The average included in Verizon's analysis is the average of the intraLATA-toll-related revenues generated by these two kinds of Verizon customers. This average therefore reflects the fact that some – but not all – customers will generate intraLATA toll revenues, which is exactly what a CLEC entering the local market would reasonably expect.

Including intraLATA toll revenues in a profit-margin analysis also is particularly appropriate in New Jersey because intraLATA toll revenues in the state represent an unusually large fraction of total local revenues. The New Jersey BPU has established extremely small local calling areas, with very low flat rates for unlimited local calls within those calling areas. As a consequence of that decision, a great deal of local service revenues are earned through the provision of intraLATA toll services, rather than through provision of flat-rate service as in other states.[31] Just as Verizon earns local revenues through the provision of intraLATA toll service, it is appropriate to assume that a competitor would earn revenues in the same manner. Indeed, any contrary approach would mean that the gross profit margin available to competitors would turn largely on the determinations that a state commission has made in apportioning local revenues between flat-rate and toll charges, rather than on the total local revenues that carriers in that state may earn.

AT&T next argues that the issue of whether it is appropriate to include intraLATA toll revenues in a profit-margin analysis is ultimately moot because "[a]dding IntraLATA toll revenues to WorldCom's New Jersey margin analysis would not change the fact that statewide margins in New Jersey are negative."[32] Given that WorldCom's analysis – even without including intraLATA toll revenue – shows positive gross profit margins across the board, AT&T's claim is obviously false. What AT&T appears to mean is that, even when intraLATA toll revenues are added to WorldCom's analysis, the revenues available would still be less than

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30 See Garzillo/Prosini Reply Decl. Att. 3.

31 The flat rate for local service in New Jersey is $8.19, compared to a nationwide average of $15.07. See Taylor Decl. Att. 2. By comparison, the ratio of intraLATA toll calls to local calls in New Jersey is the fourth highest percentage in the nation, and more than 2.5 times the national average. See FCC, Statistics of Common Carriers, Table 2.5.

32 AT&T Ex Parte Letter at 20.

AT&T's and WorldCom's supposed $10 per month in internal costs.[33] But that claim also is wrong as a factual matter, and misplaced as a legal matter. As Verizon has demonstrated, the average customer in New Jersey generates ****** per month from intraLATA toll services.[34] Adding that figure to WorldCom's analysis produces a gross margin well in excess of $10 per month for customers in every region of the state.[35]

In any event, a competitor's internal costs are legally irrelevant in a profit-margin analysis. As the D.C. Circuit has held, the only inquiry in a price-squeeze case is whether "a supplier charges its wholesale customers a higher rate, in relation to costs, than it charges its retail customers."[36] And the undisputed facts here show that the wholesale costs for a UNE platform in New Jersey are lower than retail revenues.

AT&T nonetheless argues that the law somehow guarantees competitors a "living profit" – as AT&T defines that term. That is absurd. Neither section 271 nor the antitrust law guarantees competitors a profit of any kind, and certainly not a profit that competitors

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[33] See id. ("Adding the potential intraLATA toll revenues that may be available to new entrants in New Jersey still would not create sufficient revenues to cover the more than $10.00 internal costs of entry.").

[34] Garzillo/Prosini Reply Decl. Att. 3.

[35] AT&T has submitted a confidential ex parte in which it claims that the revenues from the provision of intraLATA toll service are significantly lower than Verizon has demonstrated. See Ex Parte Letter from Robert W. Quinn, AT&T, to William F. Caton, FCC, CC Docket No. 01-347 (Mar. 5, 2002). But AT&T offers no explanation for how its alternative figure was derived and has provided no other evidence that Verizon's estimate is somehow incorrect.

[36] Mid-Tex Elec. Coop. v. FERC, 864 F.2d 156, 161 (D.C. Cir. 1988); see also Public Systems v. FERC, 709 F.2d 73, 83-84 (D.C. Cir. 1983) ("'Price squeeze' results when a wholesale supplier charges higher prices to its wholesale customers than to its retail customers for which the wholesale customers also compete.") (citing FPC v. Conway Corp., 426 U.S. 271 (1976)); Town of Concord v. Boston Edison, 915 F.2d 17, 28 (1st Cir. 1990) (noting that "in every case" in which courts have found a price squeeze in the context of the regulated electricity industry, "the price squeeze allegation involved wholesale prices that *exceeded* retail prices, . . . thereby eliminating some of the 'administrative' problems we have found surrounding a jury's efforts to determine the reasonableness of the price 'gap'").

themselves define as adequate.[37] Under AT&T's view, a price squeeze would exist any time the costs of a *least* efficient competitor exceed the margins produced by regulated rates, even where those rates reflect the costs of a hypothetical *most* efficient competitor. This would enable competitors to game the system, by alleging that their internal costs are as high as was necessary to establish evidence of a price-squeeze. Moreover, under AT&T's view, the Commission would at the very least be required to analyze whether a CLEC's purported internal costs were the costs that a most efficient competitor would be expected to incur. This goes well beyond what Congress contemplated in section 271.

Finally, AT&T challenges two aspects of Verizon's profit-margin analysis, but its claims are without merit. AT&T first complains that Verizon's comparison of the UNE platform rates in New Jersey with the Verizon's retail "Local Package" offering is "irrelevant," because it applies to only "high-value" customers, which AT&T claims competitors have no way to "seek out and serve" independently of "average" customers.[38] It is well accepted, however, that CLECs may – and frequently do – specifically target high-value customers by offering bundles

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37 The one case that AT&T cites for its "living profit" proposition – the 1945 decision by the Second Circuit in Alcoa – requires nothing of the sort, especially in the circumstances here. See United States v. Aluminum Co. of Am., 148 F.2d 416 (2d Cir. 1945) ("Alcoa"). Although Alcoa refers to a "living profit," it does not hold that the law guarantees competing firms a "living profit"; indeed, it does not apply a "living profit" test in analyzing the plaintiff's claims. Rather, Alcoa inquires whether the defendant could operate profitably at the prevailing market price if it purchased the monopoly product at the same price charged to the plaintiff. See id. at 436 ("[t]o establish [the price squeeze] the plaintiff asks us to take 'Alcoa's' costs of 'rolling' as a fair measure of its competitors' costs"); Illinois Cities of Bethany v FERC, 670 F.2d 187, 189 (D.C. Cir. 1981) (Supplemental Opinion on Rehearing) ("Properly understood . . . the transfer price test [from Alcoa] probes only whether the utility itself could buy or sell at its own prices."). The "living profit" dicta never required an analysis of a competitor's *internal* costs. See Alcoa, 148 F.2d at 436-38; Illinois Cities of Bethany, 670 F.2d at 189. Moreover, Alcoa did not involve either wholesale or retail prices that are regulated. And courts have held that where, as here, both wholesale and retail rates are fully regulated, the concept of a price squeeze does not apply. In Town of Concord, for example, then-Judge Breyer stated that "'normally' a price squeeze will not constitute an exclusionary practice in the context of a fully regulated monopoly." 915 F.2d at 29. Finally, professors Areeda and Hovenkamp have explained that, to the extent Alcoa held that "it was an unlawful exercise of Alcoa's monopoly power in ingot to set the price of ingot higher than a 'fair price' while setting the price of sheet so low as to preclude 'a living profit' for competing sheet producers," that holding "was incorrect" and suffers from both "administrative difficulties" and "substantive flaws." IIIA Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law ¶ 767d2, at 134 (1996).

38 AT&T Ex Parte Letter at 21-22.

of service that are likely to attract only such customers.[39] Indeed, the long distance incumbents have acknowledged that this is exactly the exact strategy that certain CLECs in Verizon's region have pursued using the platform.[40] In any event, AT&T's arguments are irrelevant because the gross margin available for serving even the average customers in New Jersey is nearly as high as the gross margin available in the Local Package analysis.[41]

AT&T next complains that Verizon's analysis "offers no information as to how it computed any of the values" in its analysis, particularly with respect to the cost and revenue categories labeled "Other" in Verizon's analysis.[42] The "Other" category on the retail side of Verizon's analysis includes revenue from vertical and operator services. The "Other" category on the wholesale side of Verizon's analysis includes revenues from the daily usage file, operator services, and local number portability.

B. Consumer Benefits of Verizon's Long Distance Entry.

AT&T disputes that Verizon's entry into the long distance market will benefit consumers in New Jersey. There is obviously no merit to such claims. As the Commission has repeatedly found, "BOC entry into the long distance market will benefit consumers and competition."[43]

AT&T's only affirmative argument for why Bell company entry "would have little if any impact on consumers" is its assertion that the long distance market is already sufficiently competitive.[44] But real-world experience with BOC entry demonstrates that not to be the case.[45] For example, since Verizon has entered the long distance markets in New York, Massachusetts, Connecticut, and Pennsylvania, millions of subscribers in these states have switched to Verizon. These consumers obviously perceive a true benefit in switching to Verizon for their long distance service, or they would not have switched.

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39 See, e.g., RCN, Form 10Q (Nov. 9, 2001) ("The Company's primary business is delivering bundled communications services to residential customers").

40 See, e.g., Comments of WorldCom at 33, fn. 44, Verizon Massachusetts II Application, CC Docket No. 00-176 (Oct. 16, 2000) ("There is only one way to enter the market relying on UNEs rates, and that is through the strategy being followed by Z-Tel . . . That strategy involves selling a high-cost, feature-rich package of local and long-distances services to customers who want such a high-end package and are willing to pay a premium for it.").

41 See Garzillo/Prosini Reply Decl. Att. 3.

42 AT&T Ex Parte Letter at 22.

43 Pennsylvania Order ¶ 125; Massachusetts Order ¶ 234; Rhode Island Order ¶ 103.

44 AT&T Ex Parte Letter at 15.

45 See also Policy and Rules Concerning the Interstate, Interexchange Marketplace, Notice of Proposed Rulemaking, 11 FCC Rcd 7141, ¶ 81 (1996) ("Increasing the number of facilities-based carriers should make tacit price coordination more difficult.").

Indeed, numerous independent consumer groups have demonstrated that the benefits to consumers who have switched to Verizon have been enormous. For example, TRAC has demonstrated that consumers in New York who switched to Verizon long distance are saving up to $284 million annually.[46] The Consumer Federation of America and the Consumers Union have demonstrated that Verizon's entry in New York has enabled consumers in that state to obtain rate reductions of 20 percent for local and long distance services.[47] And TRAC has filed comments in this proceeding demonstrating that consumers in New Jersey can expect to receive up to $167 million in savings annually as a result of Verizon's entry.[48] Neither AT&T – nor any other CLEC – has contested the results of these consumer groups in this proceeding.[49] Moreover, none of these calculations takes into account the fact that AT&T and the other long distance incumbents have recently raised their rates yet again, with increases as high as 10 to 20 percent.[50]

Finally, any analysis of the benefits of Bell company entry into long distance must also take into account the benefits to consumers in *local* markets. As Verizon has demonstrated, local competition has increased dramatically following Verizon's entry into the long distance market. For example, Verizon demonstrated in its Application that, since Verizon's entry in New York, the number of local lines served by competitors there has increased by more than 130 percent,

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46 Telecommunications Research & Action Center (TRAC), 15 Months After 271 Relief: A Study of Telephone Competition in New York at 1 (Apr. 25, 2001) (Application, App. J, Tab 7).

47 See Consumer Fed'n of Am. & Consumers Union, Lessons from 1996 Telecommunications Act: Deregulation Before Meaningful Competition Spells Consumer Disaster 9-10 (Feb. 2001).

48 See TRAC at 3.

49 AT&T's Ex Parte Letter instead challenges a study prepared by Professors Jerry Hausman and Gregory Sidak that shows that long distance rates have decreased following Bell company entry. Given the fact that the Commission and numerous consumer groups have all concluded, based on real-world experience, that BOC entry does result in substantial consumer benefits, there is no need to address AT&T's theoretical claims here. In any event, AT&T's claims are flatly inconsistent with the fact that, in states where Verizon has entered the long distance market, millions of consumers have actually chosen Verizon as their long distance provider.

50 Wayne Kawamoto, Qwest Criticizes AT&T Over Rates, CLEC-Planet (Jan. 10, 2002), at http://www.clec-planet.com/news/01jan2002/1qwest.html ("AT&T, WorldCom and Sprint recently announced increases of 10 to 20 percent on their basic rate plans."); AT&T News Release, Rates, Terms and Conditions, Advance Notice of Price Increase (Dec. 14, 2001); MCI, Recent Rate, GSA, and Calling Services Updates, at http://www.mci.com/mci_service_agreement/res_most_recent_info.jsp; Sprint, Recent Changes to Sprint Rates, Terms and Conditions, at http://csg.sprint.com/ratesandconditions/documents/resratechanges.pdf.

including a 345-percent increase in UNE platform lines and an 80-percent increase in facilities-based lines.[51] In Pennsylvania, CLECs have added more than 25,000 lines per month since the Pennsylvania PUC endorsed Verizon's section 271 application in June 2001.[52] And, in Massachusetts, CLECs have been adding more than 24,000 lines per month in that state.[53]

Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 01-2746.

Sincerely,

Clint E. Odom

cc: A. Johns
R. Lerner
S. Pie
D. Shetler
J. Swift

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51 See Application, Brief Att. A, Ex. 5.

52 See id. Att. A, Ex. 7.

53 See id. Att. A, Ex. 6.